

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
Petition for Waiver Filed by)	CC Docket No. 96-45
)	
Pioneer Telephone Cooperative, Inc.)	AAD 94-108
)	
Concerning the Definition of "Study Area" Contained in the)	
Part 36 Appendix-Glossary of the Commission's Rules)	

To: Chief, Common Carrier Bureau

**REQUEST FOR REMOVAL OF WAIVER CONDITION
CONSISTENT WITH COMMISSION POLICY**

Pioneer Telephone Cooperative, Inc. ("Pioneer") submits this request for the removal of the "cap" on the Universal Service Fund ("USF") cost allocation support payments established by the Commission's Order adopted November 30, 1994, with respect to Pioneer's acquisition.¹ The Order authorized the transfer of local exchange facilities consisting of 12 exchanges serving 8,800 access lines into Pioneer's then existing study area. As a condition to the grant of study area waiver, the Order imposed a limitation or "cap" on the increase in USF disbursements to the Pioneer study area associated with the acquisition not to exceed \$1,197,540 per calendar year. Consistent with the overarching Commission policy conclusions now established by the Memorandum Opinion and Order on Reconsideration, released September 9, 1999,² Pioneer requests that its individual USF cap be removed as of January 1, 2000.³

¹ Memorandum Opinion and Order, AAD 94-108, 9 FCC Rcd 7785 (1994) ("Order").

² Memorandum Opinion and Order on Reconsideration, AAD 93-93, 95-72, 95-30, 97-21, 97-23, 97-117, 98-44, 98-53, DA 99-1845, released September 9, 1999 ("Cap Removal Order").

³ Although this Request references an effective date of January 1, 2000, Pioneer does not waive its right to raise issues in the future with respect to the applicability of the Commission's

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Pioneer expects that many other similarly-situated companies will be seeking removal of their individual USF caps consistent with the Bureau's newly articulated policy conclusions. In order to avoid the administrative burden of repeatedly applying its new policy to a multitude of almost identical requests, Pioneer respectfully suggests that the Commission simply clarify, on its own motion, its policy by lifting the 57 remaining USF caps.

In the absence of this clarification, Pioneer respectfully requests expedited action in light of the consistency of this request with the recent policy conclusions and to accommodate the completion of the USF administration prior to January 1, 2000. In support thereof, Pioneer submits the following:

I. Background

On July 19, 1994, Pioneer and GTE Southwest, Incorporated filed a joint petition for waiver of the frozen study area boundaries. Petitioners estimated that as a result of the acquisition, Pioneer's annual USF support would increase by approximately \$1,197,540 and that GTE's annual support would decrease by approximately \$1,068,920.⁴ On December 1, 1994, the FCC released its Order authorizing the transfer of 12 exchanges serving 8,800 access lines into Pioneer's existing study area, subject to the condition that the incremental increase in annual USF support provided to the study area attributable to the acquisition and the upgrade of facilities for the acquired exchanges would not exceed the estimated post-upgrade amount of

policy or rules or the application of the cap by the National Exchange Carrier Association ("NECA") or the Universal Service Administrative Corporation ("USAC") to all prior periods beginning May 8, 1997.

⁴ Order at ¶ 6.

\$1,197,540.⁵ NECA was ordered not to distribute USF payments exceeding the limitation.

Although Pioneer was aware in 1994 that the facilities to be purchased were substandard, and that the Bureau would likely impose a limit on USF recovery, Pioneer, nevertheless, fully expected that a rational network cost recovery application would be ultimately resolved consistent with the public interest.⁶ Pioneer believed that rational cost recovery would be possible by removal of the limit or the implementation of a new USF plan, under which the reasonable high costs would be addressed. The Pioneer study area's Year 2000 USF receipts, based on data forwarded from USAC to the Commission on October 1, 1999, would be \$4,036,028.26.⁷ Grant of this request will allow Pioneer to recover fully the USF payments related to the costs incurred in providing service to rural Oklahoma.

II. Removal of Pioneer's Cap is Consistent with Established Commission Policy

On September 9, 1999, the Commission issued its Cap Removal Order, addressing petitions for waiver and reconsideration of the USF conditions applied to 32 study areas. While

⁵ Order at ¶¶ 10, 13.

⁶ Since the acquisition in 1994, Pioneer has completed extensive upgrades throughout its study area which consists of a total of approximately 48,000 access lines. With respect to the acquired exchanges which consist of 8,800 lines, Pioneer has replaced and upgraded central office switching equipment and reconfigured its network to allow the provision of CLASS and custom calling features. The central office conversions in these exchanges allowed Pioneer to provide equal access throughout its study area and eliminate party line service. With respect to the remaining 39,000 lines in its study area, Pioneer also has replaced and upgraded (from analog to digital) special equipment used to transport traffic or provide associated services to its switches. Further, Pioneer has deployed miles of new buried plant and toll fiber throughout its study area to improve toll service. Pioneer has invested approximately \$39 million in its study area over the past four years, approximately \$14 million of which is associated with upgrading the 12 acquired exchanges.

⁷ According to USAC, the USF amount with the limitation would be \$3,667,872.

the Commission noted its policy of monitoring USF impact on carriers involved in study area changes and capping carriers at some estimate of post-upgrade costs, the Commission correctly concluded that limiting the duration of those caps is appropriate and in the public interest.⁸ Accordingly, the Commission granted petitioners' requests to lift the individual caps placed on their high cost loop support on a going-forward basis.⁹ As of January 1, 2000, the high cost loop support for the 32 study areas will then be based upon the average cost of all their lines.

The Commission acknowledged that "caps of unlimited duration may hinder petitioners' incentive and ability to extend service to previously unserved areas, as well as to upgrade service to their existing customers."¹⁰ The Commission also determined that "limiting the petitioners to the high cost loop support estimated in their original petitions, in perpetuity, is not necessary to accomplish the [Commission's] policies . . ." The Commission "concluded that . . . the individual caps placed on the carriers' high cost loop support have served their purpose . . ."¹¹ The Commission also recognized correctly that lifting the caps on petitioners' high cost support will increase the affected LECs' incentives and ability to extend service to previously unserved areas and upgrade their networks."¹²

⁸ Cap Removal Order at ¶ 9.

⁹ Cap Removal Order at ¶ 10.

¹⁰ Id.

¹¹ Id.

¹² Cap Removal Order at ¶ 10. See also Federal-State Joint Board on Universal Service: Promoting Development and Subscribership in Unserved Areas, Including Tribal and Insular Areas, Further Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 99-204 (rel. Sept. 3, 1999).

Pioneer's conditions are effectively identical to those petitioners addressed in the Cap Removal Order. Therefore, removal of Pioneer's individual USF cap is both warranted by, and consistent with, the Commission's conclusions and policy enunciated in the Cap Removal Order. Like the petitioners addressed in that order, Pioneer purchased exchanges several years ago and, in conjunction with its request for study area waiver, provided a reasonable estimate of the costs to upgrade the subject facilities for the provision of basic telephone service to existing and new customers. Following the grant of study area waiver, Pioneer proceeded to deploy service and upgrade the facilities according to its plans. Continuing to limit Pioneer to the high cost loop support estimated in its original petition is not necessary to accomplish the Commission's policies. Further, continued application of the individual cap imposed in December of 1994 will hinder Pioneer's incentive to continue to invest in advanced services networks and to upgrade existing service, and would jeopardize Pioneer's ability to maintain reasonably comparable rates for modern services.

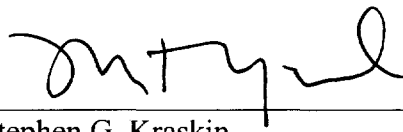
III. Conclusion

Consistent with the Commission's policy established in its Cap Removal Order, Pioneer requests that the individual USF cap established by the Commission's Order be removed as of January 1, 2000. The Pioneer study area's Year 2000 USF receipts, based on data forwarded from USAC to the Commission on October 1, 1999, would be \$4,036,028.26. Accordingly, Pioneer requests that the Commission lift the individual cap placed on its high cost loop support on a going-forward basis so that, as of January 1, 2000, Pioneer's high cost loop support payments will be based upon the average cost of all its lines. Adequate USF funding is necessary to allow Pioneer to continue to maintain and upgrade its facilities for the provision of

universal service to its rural Oklahoma study area. Expedited grant of this request will serve the public interest by ensuring that Pioneer receives adequate universal service funding to recover the costs of its investment and thereby meet its current and future service requirements.

Respectfully submitted,

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November 5, 1999

CERTIFICATE OF SERVICE

I, Shelley Davis, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, hereby certify that a copy of the foregoing "Request for Removal of Waiver Condition Consistent with Commission Policy" Pioneer Telephone Cooperative, Inc. was served on this 5th day of November, 1999 by hand delivery to the following parties:



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